

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

OCT 6 1997

PATRICK FISHER
Clerk

JAMES R. JONES,

Plaintiff - Appellant,

v.

WILLIAM L. CUMMINGS, Secretary
of Corrections; BRUCE WELLS,
Medical Doctor,

Defendants - Appellees.

No. 97-3185

D. Kansas

(D.C. No. 96-CV-3576)

ORDER AND JUDGMENT*

Before **ANDERSON, HENRY**, and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34 (a); 10th Cir. R. 34.1.9. This cause is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

James R. Jones, an inmate at the Winfield Correctional Facility, appeals from the dismissal, for failure to state a claim, of his civil rights action against various corrections personnel, pursuant to 42 U.S.C. § 1983. In his action Mr. Jones alleges that his Eighth Amendment right to be free from cruel and unusual punishment has been violated because the defendants refused, among other things, to operate on his hand.

We have carefully reviewed the file and conclude that the district court was correct, substantially for the reasons set forth in the district court's order filed May 19, 1997. We also conclude that this appeal fails to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii) for purposes of counting prior occasions under 28 U.S.C. § 1915(g).

DISMISSED. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge